IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 659 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAMARSINGH MANSUKHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 659 of 1994
Mr. B.S. Supheia, for the appellant
Mr. K.P. Rawal, APP, for the respondent

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE M.C.PATEL

Date of decision: 05/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant, original accused, by filing this appeal under Section 374(2) of the Code of Criminal Procedure, 1974 ('Code' for short), has challenged the judgment and order dated June 21, 1994, passed by the learned Additional Sessions Judge, Godhra, in Sessions

Case No.73 of 1993, by which judgment and order, the appellant was convicted under Sections 302 and 435 of the Indian Penal Code ('IPC' for short) and sentenced to undergo R.I. for life and fine of Rs.500 in default R.I. for two months under Section 302 of the IPC, and R.I. for six months and fine of Rs.1000 in default R.I. for two months under Section 435 of the IPC.

2. The charge against the appellant was that on March 4, 1993, at about 18.30 hrs, in village Ladpur, Taluka Godhra, Dist: Panchamahals, the appellant had intentionally given kick and fist blows to his paternal aunt (foi) Nandaben Devjibhai, and had thrown an iron cot at her, as a result of which, she had sustained serious injuries and had succumbed to the said injuries on the spot. The appellant was further charged that, when he was scolded by the other witnesses, he had chased them by wielding a dharia. The appellant was further charged for setting on fire the vada situated in the field of his father Mansukhbhai Devjibhai. The appellant was further charged for keeping in his possession the dangerous weapon, namely, dharia, which is an offence punishable under Section 135 of the Bombay Police Act.

3. The appellant was serving in the SRP Group at Surat. Due to his misconduct, he was dismissed from service and, thereafter, he was staying at village Ladpur with his father, Mansukhbhai Devjibhai. Deceased Nandaben, who was a divorcee since 25-30 years prior to the date of the incident, was also staying with Mansukhbhai Devjibhai. The appellant had beaten his father Mansukhbhai by causing a fracture on his hand and a police complaint in that regard was pending against the appellant at the time of the incident. The parents of the appellant, because of his rude behaviour, had left their house. It is the prosecution case that the appellant had scolded deceased Nandaben that she was not cooking the food and serving it in time. So saying, he had given kick and fist blows to deceased Nandaben and had thrown the iron cot at her. Deceased Nandaben had sustained serious injuries and succumbed to the injuries on the spot. P.W.2, Santokben Gopalbhai, who was residing in the neighbourhood of the appellant, had lodged a complaint before the Police Sub-Inspector, Godhra Taluka Police Station, against the appellant, for the offence under Sections 302 and 435 of the IPC, which was registered at CR No.I-59 of 1993 at Godhra Taluka Police Station. The investigation was carried out by P.W.7, PSI, Gohil. After holding inquest, P.W.1, Dr.J.J. Shrimali, Medical Officer of Civil Hospital, Godhra, had performed the post-mortem of the dead body of deceased

Nandaben. On receipt of the report from the FSL, and, on completion of the investigation, chargesheet against the appellant was filed in the Court of learned Judicial Magistrate, First Class, Godhra, for the offences under Sections 302, 307 and 435 of the IPC and Section 135 of the Bombay Police Act. As the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, the learned learned Judicial Magistrate, First Class, Godhra, committed the said Criminal Case to the Court of Sessions Judge, Godhra, which came to be numbered as Sessions Case No.74 of 1993.

4. Charge Exh.2 was framed against the appellant for the offences under Sections 302, 307 and 435 of the IPC and Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant, wherein, he pleaded not guilty and claimed to be tried. The prosecution, in order to prove charges framed against the appellant, led oral as well as documentary evidence. After the evidence of the prosecution was over, the appellant was questioned generally and his statement came to be recorded under Section 313 of the Code. The defence of the appellant was of general denial. The appellant did not lead any evidence in defence.

5. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence and the arguments advanced by the learned advocates for the parties, had concluded that the prosecution had proved beyond doubt that deceased Nandaben had died homicidal death on March 4, 1993 due to the injuries caused by the appellant. It was concluded that the injuries sustained by deceased Nandaben were sufficient in the ordinary course of nature to cause her death. It was further concluded that the appellant had intentionally set on fire the vada which was situated in the field of his father, Mansukhbhai Devjibhai. On the basis of abovereferred to conclusions, the learned Additional Sessions Judge, convicted and sentenced the appellant as stated in paragraph 1 of this judgment, which has given rise to filing of this appeal.

6. Learned advocate, Mr. B.S. Supheia, appearing for the appellant, and learned Additional Public Prosecutor, Mr. K.P. Rawal, have taken us through the entire record and proceedings of the case. We have heard the learned counsel for the parties and have also gone through the judgment of the learned Additional Sessions Judge, Godhra.

7. The oral testimony of P.W.1, Dr. Shrimali, and

the post mortem notes Exh.15 had proved beyond doubt that the deceased Nandaben had died homicidal death. The finding that the deceased Nandaben had died homicidal death, recorded by the learned Additional Sessions Judge, is, therefore, hereby confirmed. The evidence of P.W.2, Santokben Gopalbhai Patel, who had lodged the complaint before the Godhra Taluka Police Station, had proved beyond doubt that the appellant had given kick and fist blows on account of a trivial quarrel that the deceased was not cooking food in time. After giving kick and fist blows, the appellant had thrown the iron cot at the deceased which had resulted into severe injuries on various parts of her body. The post-mortem notes Exh.15 also corroborates the version of P.W.2, Santokben, that the appellant had intentionally caused severe injuries on the body of deceased Nandaben, and, by throwing the iron cot by the appellant at deceased Nandaben, she had received head injury and internal hemorrhage. As per the post-mortem note, the deceased had sustained as many as 11 external injuries which were caused by the appellant in a most cruel manner. P.W.1, Dr. Jayantilal Shrimali, had also opined that the injuries sustained by deceased Nandaben were sufficient in the ordinary course of nature to cause her death. The oral testimony of eye-witness, P.W.2, Santokben and P.W.3, Nayanaben Gopalbhai, had proved beyond doubt that the appellant was a very head-strong person and was in the habit of beating his family members on some petty quarrels. He had also driven out his parents by beating his father and ill-treating his mother. Criminal proceedings were pending between the appellant and his father at the time of occurrence of the incident in question, which indicated that the appellant was of ferocious nature. The oral testimony of above two eye-witnesses had remained unshaken in the cross examination, and it was established beyond doubt by their evidence that the appellant had caused fatal injuries to deceased Nandaben on the vital parts of her body which had caused her death. The appellant had acted in a most cruel manner and had taken innocent life of deceased Nandaben who was staying in his house for cooking food. The evidence led by the prosecution had proved beyond doubt that the appellant had intentionally caused injuries and he had knowledge that such injuries were likely to cause death of deceased Nandaben. The oral testimony supported by the medical evidence, had proved beyond doubt that the appellant had caused the murder of Deceased Nandaben. Therefore, the conviction of the appellant recorded by the learned Additional Sessions Judge under Section 302 of the IPC and the sentence imposed on him deserves to be confirmed.

8. The conviction of the appellant under Section 435 of the IPC is also eminently just and proper. The evidence of the abovereferred two witnesses had also proved that the appellant, after causing the injuries on deceased Nandaben, had set on fire the vada situated in the field of his father Mansukhbhai Devjibhai, and had destroyed the cactus hedge and fodder stored in the said vada. Having gone through the record and proceedings and the evidence led by the prosecution, we are of the view that the conviction of the appellant recorded under Section 435 of the IPC cannot be called erroneous or against the evidence on record and, therefore, the conviction of the appellant under Section 435 of the IPC deserves to be confirmed, and, consequently, the sentence imposed on the appellant to undergo R.I. for six months and fine of Rs.1000/- in default R.I. for two months, is maintained.

9. In the result, this appeal is devoid of merits and, therefore, is dismissed. The conviction of the appellant under Sections 302 and 435 of the Indian Penal Code and sentence to undergo R.I. for life and fine of Rs.500 in default R.I. for two months under Section 302 of the IPC, and R.I. for six months and fine of Rs.1000 in default R.I. for two months under Section 435 of the IPC, recorded by the learned Additional Sessions Judge, Godhra, in Sessions Case No.74 of 1993, are confirmed. The muddamal be destroyed as per the directions contained in the impugned judgment and order.

(M.H. Kadri, J.)

(M.C. Patel,J.)
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